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August 8, 2014

REDACTED – FOR PUBLIC INSPECTION

ORIGINAL
ACCEPTED/FILED
AUG - 8 2014
Federal Communications Commission
Office of the Secretary

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, NW
Washington, DC 20554

Re: ***In the Matter of Connect America Fund, Universal Service Reform -- Mobility Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing an Unified Intercarrier Compensation Regime, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking*, WC Docket Nos. 10-90, 14-58, 07-135, WT Docket No. 10-208, CC Docket No. 01-92, FCC 14-54, released June 10, 2014**

Submission of "Comments of the Nebraska Rural Independent Companies" Pursuant to Third Supplemental Protective Order, WC Docket No. 10-90, DA 12-1995, released December 11, 2012

Dear Ms. Dortch:

Pursuant to the *Third Supplemental Protective Order*, WC Docket No. 10-90, DA 12-1995, released December 11, 2012, attached for filing are the redacted version of the Highly Confidential Version of the "Comments of the Nebraska Rural Independent Companies" in response to the Commission's *Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on Reconsideration, and Further Notice of Proposed Rulemaking* released June 10, 2014 in the above-captioned proceeding.

Please contact the undersigned should you have any questions.

Respectfully submitted,

Thomas J. Moorman

Thomas J. Moorman

Attachments

No. of Copies rec'd 0+9
List ABCDE

REDACTED - - FOR PUBLIC INSPECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

ORIGINAL

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
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Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92

ACCEPTED/FILED

AUG - 8 2014

Federal Communications Commission
Office of the Secretary

COMMENTS OF
THE NEBRASKA RURAL INDEPENDENT COMPANIES

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Their Attorneys

Dated: August 8, 2014.

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SUMMARY

As explained herein, the Nebraska Rural Independent Companies (NRIC") make numerous recommendations with respect to supporting the development and implementation of policies and mechanisms that would provide a reasonable and informed opportunity for Rate of Return ("ROR") Carriers to have the option of electing to receive model-based support instead of traditional High Cost Loop Support ("HCLS") and Interstate Common Line Support ("ICLS") in the short-term and regarding implementation of a Connect America Fund ("CAF") for ROR Carriers in the long-term. In making these recommendations, NRIC seeks to establish a framework that will help provide the basis for increased investments in ROR Carrier networks capable of providing high quality voice service and broadband access at the established 4 Mbps downstream/1 Mbps upstream speeds while helping to ensure that backsliding (*i.e.*, a reduction in the quality or availability of existing service to an end user by that end user's ROR Carrier arising from a lack of Universal Service Fund ("USF") or CAF support for the location because the cost is above the alternative technology cutoff ("ATC")) does not occur in those instances in which consumers are or are capable of receiving such broadband services. Moreover, NRIC seeks a framework that provides for sufficient and predictable recovery under both federal and state universal service programs and mechanisms for the deployment, operation, and maintenance of their networks, while recognizing that, unlike certain interstate Price Cap ("PC") carriers operating in certain rural areas, ROR Carriers have utilized these programs and mechanisms to provide high quality universal service and access to broadband services.

Further, NRIC respectfully submits that its comments provide a framework that encourages scalable network investments required to encourage further deployment and operation of the networks required to provide quality service to consumers. NRIC's positions

also are aimed at avoiding backsliding in rural areas where consumers already have access to services that meet the Commission's voice grade and broadband requirements, while at the same time recognizing the Commission's statement in paragraph 71 of its June 10, 2014 action – that "classification of a rate-of-return area as extremely high-cost under the forward-looking model does not mean that support would only be available from the Remote Areas Fund."

In light of the Commission's issues raised in the portion of June 10, 2014 action outlining requests for comment (which is referred to as the "*FNRPM*") and the dynamics of the interaction of those issues, NRIC was required to make certain policy assumptions within these comments, not only with respect to the option of a short term model-based support mechanism (referred to as the "ROR Carrier model-based CAF II") but also the development of a new, yet-to-be-determined long-term mechanism for ROR Carriers (referred to as the "ROR Carrier forward-looking mechanism CAF III").

As a result, NRIC specifically notes that if *some or all* of the following baseline presumptions are either not utilized or are modified by the Commission as it resolves the issues raised in the *FNPRM*, NRIC's positions stated in these comments may necessarily require change including, by way of example only, NRIC's support of the short-term option of model-based support for ROR Carriers. These baseline presumptions and assertions include:

- The Commission plans to use the current PC CACM as a baseline from which a ROR Carrier model-based CAF II can be developed, modifying the Phase II PC Connect America Cost Model ("PC CACM") to reflect ROR Carrier characteristics and running any such ROR Carrier model-based CAF II for ROR Carriers utilizing the entire $2 billion budget noted for ROR Carriers in the *FNPRM*;

- The revenue funding threshold applied to ROR Carriers in the ROR Carrier model-based CAF II is no less than the preliminary $52.50 established by the Commission for PC Carriers under the PC CACM;
- The ATC is calculated by utilizing the entire $2 billion ROR Carrier budget;
- The ROR Carrier model-based CAF II cost module develops a network providing broadband speeds set at the current speeds – one 4 Mbps downstream/1 Mbps upstream – notwithstanding proposals to increase these speeds as reflected in the *FNRPM* (the latter of which – increasing the speed thresholds – should not be made at this time for the reasons stated herein);
- Qualified competitors must meet performance standards as outlined herein and must serve 100 percent (100%) of the customer locations in a ROR Carrier's census block(s) in order to successfully challenge a ROR Carrier's award of either short-term ROR Carrier model-based CAF II or yet-to-be-determined ROR Carrier forward-looking mechanism CAF III support in the affected census block;
- All "in-town" census blocks are presumed not to be eligible for short-term ROR Carrier model-based CAF II or yet-to-be-determined ROR Carrier forward-looking mechanism CAF III support based on the presumption as explained herein that "in-town" areas are competitive or, alternatively, are areas where a business case can be made for deployment;
- All other ROR census blocks are presumed to be non-competitive unless found otherwise through a competitor's challenge that demonstrates that it meets the coverage and service standards described above and discussed in more detail herein;

- A competitor has the burden of filing a challenge and providing evidence that it meets the coverage and service standards within a ROR Carrier census block; and
- Any challenge to the recovery for a ROR Carrier from either ROR Carrier model-based CAF II or the yet-to-be-determined ROR Carrier forward-looking mechanism CAF III shall be a one-time event without a re-look during the period of the useful life for the facilities being used by the ROR Carrier for the services it provides.

NRIC demonstrates in these comments that each of these presumptions and assertions is rational and a prudent basis upon which Commission action regarding the *FNPRM* should proceed.

Before the
Federal Communications Commission
Washington, D.C. 20554

ACCEPTED/FILED

AUG - 8 2014

Federal Communications Commission
Office of the Secretary

In the Matter of	)	
	)	
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	)	
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92

COMMENTS OF
THE NEBRASKA RURAL INDEPENDENT COMPANIES

The Nebraska Rural Independent Companies ("NRIC"),[1] which provide telecommunications and broadband access services to some of the most-rural, sparsely populated parts of America, appreciate the opportunity to submit these Comments in response to the issues raised in "Further Notice of Proposed Rulemaking" portion of the action taken on June 10, 2014 by the Federal Communications Commission (the "Commission" or the "FCC").[2]

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[1] The NRIC companies submitting these Comments are: Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telephone Company, Consolidated Telco, Inc., Consolidated Telecom, Inc., The Curtis Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hamilton Telephone Company, Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Co., K. & M. Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telecom Inc., and Three River Telco. Each of the NRIC companies is an interstate rate-of-return carrier ("ROR Carrier").

[2] *See In the Matter of Connect America Fund, Universal Service Reform -- Mobility Fund, ETC Annual Reports and Certifications, Establishing Just and Reasonable Rates for Local Exchange Carriers, Developing an Unified Intercarrier Compensation Regime, Report and Order, Declaratory Ruling, Order, Memorandum Opinion and Order, Seventh Order on*

I. INTRODUCTION

For the reasons stated herein, NRIC makes numerous recommendations in these Comments supporting the development and implementation of ROR Carrier-based policies and mechanisms that would provide a reasonable and informed opportunity for ROR Carriers to have the option of electing to receive model-based support instead of traditional High Cost Loop Support ("HCLS") and Interstate Common Line Support ("ICLS") in the short-term and regarding implementation of a Connect America Fund ("CAF") for ROR Carriers in the long-term.[3] Based on the issues raised in the *FNRPM* and the status of current mechanisms applicable to both ROR Carriers and interstate PC Carriers, NRIC was required to make certain policy assumptions within these comments, not only with respect to the option of model-based support associated with a ROR Carrier model-based CAF II but also the development of a new, yet-to-be-determined ROR Carrier forward-looking mechanism CAF III.

To be sure, the NRIC members, like other ROR Carriers, operate in the higher cost-to-serve areas of the country and properly rely upon the recovery that is available to them under both federal and state universal service programs and mechanisms for the deployment, operation,

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Reconsideration, and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90, 14-58, 07-135, WT Docket No. 10-208, CC Docket No. 01-92, FCC 14-54, released June 10, 2014 (the "*FNPRM*"). The issues raised in the *FNPRM* were published in the Federal Register on July 9, 2014. *See* 79 FR 39196 (July 9, 2014). Where decisional aspects of this Commission document are noted herein, the reference to those sections will be identified as the "*7th Recon Order*."

[3] As used in these comments, NRIC is providing its observations on three distinct mechanisms rising from the issues raised in the *FNRPM.* First, these comments discuss the current federal Universal Service Fund ("USF") mechanisms related to HCLS and ICLS. Second, these comments address the yet-to-be-determined short term ROR Carrier-based model, presumably based on the recovery model applicable to interstate Price Cap carriers ("PC Carriers") with modifications which is the Phase II Connect America Cost Model ("PC CACM"). This short-term ROR Carrier-based model will be referred to herein as the "ROR Carrier model-based CAF II." Finally, these comments address the long-term, yet-to-be-determined replacement to ROR Carrier's HCLS and ICLS or ROR Carrier model-based CAF II and that mechanism will be referred to as "ROR Carrier forward-looking mechanism CAF III."

and maintenance of their networks. As demonstrated by the existing facts, unlike certain PC Carriers operating in certain of the rural areas they serve, ROR Carriers have utilized these programs and mechanisms to provide high quality universal service and access to broadband services. Thus, the continuation of these programs and the transition to alternative mechanisms must be tailored to ROR Carriers to meet the challenges of their geographic service areas and to ensure that no reduction in service is experienced by customers served by a ROR Carrier as any effort to develop these new mechanisms is addressed.

The challenges to develop these ROR Carrier-based mechanisms are not, however, in NRIC's view, insurmountable. Rather, a set of rational ROR Carrier-focused changes and a common set of policy bases from which such changes are made are necessary and will provide the Commission, its Staff and all ROR Carriers (including the NRIC members) an opportunity to update the federal USF program without, it is hoped, any backsliding on the quality and availability of service to consumers within a ROR Carrier service area.[4] Moreover, once such a program is established and the underlying presumptions are known by ROR Carriers, the process envisioned by NRIC should help ROR Carriers make an informed decision regarding their recovery from the federal USF mechanisms.

As a result, NRIC specifically notes that if *some or all* of the following baseline presumptions are either not utilized or are modified by the Commission as it resolves the issues raised in the *FNPRM*, NRIC's positions stated in these comments may change including, by way

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[4] As used in these comments, the concept of "backsliding would occur where there is a reduction in the quality or availability of existing service to an end user by that end user's ROR Carrier arising from a lack of USF or CAF support for the location because the cost is above the alternative technology cutoff ("ATC")).

of example only, NRIC's support of the short-term option of ROR Carrier model-based CAF II support. These baseline presumptions and assertions include:

- The Commission plans to use the current PC CACM as a baseline from which a ROR Carrier model-based CAF II can be developed, modifying the PC CACM to reflect ROR Carrier characteristics and running any such ROR Carrier model-based CAF II for ROR Carriers utilizing the entire $2 billion[5] ROR budget;

- The revenue funding threshold applied to ROR Carriers in the ROR Carrier model-based CAF II is no less than the preliminary $52.50 established by the Commission for PC Carriers under the PC CACM;[6]

- The ATC is calculated by utilizing the entire $2 billion ROR Carrier budget;

- The ROR Carrier model-based CAF II cost module develops a network providing broadband speeds set at the current speeds – one 4 Mbps downstream/1 Mbps upstream – notwithstanding proposals to increase these speeds as reflected in the *FNRPM* (the latter of which – increasing the speed thresholds – should not be made at this time for the reasons stated herein);

- Qualified competitors must meet performance standards as outlined herein and must serve 100 percent (100%) of the customer locations in a ROR Carrier's census block(s) in order to successfully challenge a ROR Carrier's award of either short-term ROR Carrier model-based CAF II or yet-to-be-determined ROR Carrier forward-looking mechanism CAF III support in the affected census block;

- All "In-Town" census blocks are presumed not to be eligible for short-term ROR Carrier model-based CAF II or yet-to-be-determined ROR Carrier forward-looking mechanism CAF III support based on the presumption as explained herein that "In-Town" areas are competitive or, alternatively, are areas where a business case can be made for deployment;

- All other ROR census blocks are presumed to be non-competitive unless found otherwise through a competitor's challenge that demonstrates that it meets the

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[5] NRIC understands that the total ROR budget is $2 billion and that some of the budget will likely continue to be used for CAF ICC transition. NRIC uses the $2 billion figure throughout the text of the document to reflect the total budget. In our analysis and conclusions regarding that analysis, NRIC made the assumption that $1.7 billion of the $2 billion would be available for HCLS and ICLS support if all ROR Carriers remained on those programs. The remaining balance of $300 million would be related to CAF Intercarrier Compensation ("ICC") support.

[6] *See e.g., In the Matter Connect America Fund, High-Cost Universal Service Support, Report and Order*, WC Docket Nos. 10-90, 05-337, DA 14-534, released April 22, 2014 at ¶¶ 180-181.

coverage and service standards described above and discussed in more detail herein;

- A competitor has the burden of filing a challenge and providing evidence that it meets the coverage and service standards within a ROR Carrier census block; and

- Any challenge to the recovery for a ROR Carrier from either ROR Carrier model-based CAF II or the yet-to-be-determined ROR Carrier forward-looking mechanism CAF III shall be a one-time event without a re-look during the period of the useful life for the facilities being used by the ROR Carrier for the services it provides.

For the reasons stated herein, NRIC respectfully submits that each of these presumptions and assertions is rational and a prudent basis upon which Commission action regarding the *FNPRM* should proceed. As explained herein, these baseline presumptions encourage scalable network investments required to encourage further deployment and operation of the networks required to provide quality service to consumers. At the same time, the baseline presumptions are aimed at avoiding the risk of backsliding in rural areas where consumers already have in place services that meet the Commission's voice grade and broadband requirements. Further, these baseline presumptions are consistent with the Commission's statement that "classification of a rate-of-return area as extremely high-cost under the forward-looking model does not mean that support would only be available from the Remote Areas Fund."[7]

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[7] *7th Recon Order* at ¶ 71.

II. ANY MIGRATION TO AND ADOPTION OF A NEW CONNECT AMERICA FUND MUST BE PROPERLY BUDGETED AND BE SUFFICIENT AND PREDICTABLE.

A. Both the Establishment of a ROR Carrier Forward-looking Mechanism CAF III for ROR Carriers and the Short-Term ROR Carrier model-based CAF II Should and Must Be "Sized" Using the Full Budget that the Commission Establishes for Such Carriers.

NRIC supports, in general, the Commission's announced objective within the FNPRM "to establish a 'Connect America Fund' for rate-of-return carriers"[8] such as the NRIC member companies. However, this objective must not be addressed in a vacuum. Rather, the Commission should recognize the need to make tailored modifications to the mechanisms and disbursement level policies for ROR Carriers' CAF that will encourage the migration to CAF-based mechanisms from the existing ROR Carrier federal USF mechanisms. For example, establishing a new, yet-to-be-determined ROR Carrier forward-looking mechanism CAF III or any short-term transition from existing USF mechanisms to ROR Carrier model-based CAF II support cannot rationally proceed if the contribution mechanisms for both the ROR Carrier forward-looking mechanism CAF III and the transition to a ROR Carrier model-based CAF II contemplated in the *FNRPM* are not modernized to increase the likelihood that the new mechanism and short-term transition have funding that will be sustainable. To this end, NRIC re-emphasizes the need for the Commission to promptly address revisions to the contribution mechanism that currently provides federal USF support allocated to ROR Carriers.

NRIC has filed comments in the proceeding wherein the Commission has presented issues associated with the USF contribution methodology.[9] It is critical that the issues relating to

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[8] *FNPRM* at ¶ 258.

[9] *See In the Matter of Universal Service Contribution Methodology, A National Broadband Plan for Our Future, Further Notice of Proposed Rulemaking*, WC Docket No. 06-122, GN Docket

contribution methodology be addressed by the Commission. NRIC therefore respectfully submits that it would be logical to do so either as part of addressing the issues raised in the *FNPRM* or pursuant to the announcement of a definitive track for addressing these contribution methodology issues in the pending Commission dockets so that support for the ROR Carrier forward-looking mechanism CAF III mechanism and the ability to encourage ROR Carriers in the short term to migrate to ROR Carrier model-based CAF II support are both viable and sustainable.

Likewise, NRIC respectfully submits that the Commission should independently evaluate and ensure that the support mechanisms arising from resolving the *FNPRM* issues are sufficient as required by Section 254(b)(5) and Section 254(e) of the Communications Act of 1934, as amended (the "Act").[10] As a starting place for such evaluation, the Commission should size the USF and the ROR Carrier forward-looking mechanism CAF III mechanisms in a manner that expends the entire $2 billion annual budget allocated for ROR Carriers. The short-term ROR Carrier model-based CAF II should also be implemented in a manner to accommodate this allocation. That action, in turn, will assist in continuing to support and encourage the deployment and operation of broadband-capable networks in ROR Carrier service areas. Providing the entire $2 billion of support annually appears to be the intent of the Commission

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No. 09-51, FCC 12-46, released April 30, 2012; *see also Comments of the Nebraska Rural Independent Companies in Response to Further Notice of Proposed Rulemaking Released April 30, 2012*, WC Docket No. 06-122, GN Docket No. 09-51 (filed July 9, 2012) and *Reply Comments of the Nebraska Rural Independent*, WC Docket No. 06-122, GN Docket No. 09-51 (filed August 6, 2012).

[10] 47 U.S.C. § 254(b)(5) of the Act states that support mechanisms should "be specific, predictable and sufficient . . . to preserve and advance universal service" and this requirement is, and should be, applicable to any universal service funding mechanism for ROR Carriers. Likewise, Section 254(e) makes clear that support "should be explicit and sufficient to achieve the purposes of this section." 47 U.S.C. § 254(e).

since, in several paragraphs of the *FNPRM*, the Commission references the current $2 billion budget.[11] This intent, however, should be made explicit in order to add certainty concerning the availability of support from the mechanisms being envisioned based on the issues raised in the *FNPRM*.

Additionally, NRIC respectfully submits that the Commission should ensure that the current annual $2 billion funding level for ROR Carriers remains available, and that the funding level is annually re-sized to include any and all "reserve account" dollars from prior periods that were budgeted but not spent. In budget years prior to 2014 the full amount of USF support allocated to ROR Carriers has not been expended.[12] Due to the need for funding of broadband build-out and network operations in high-cost areas, these unexpended "reserve" funds should be made available for distribution to ROR Carriers in the current or future budget cycles, as applicable, to support such broadband deployment and network operations, particularly if the commitments increase and where the funding of such commitments are shown by the FCC to be recoverable from the overall ROR budget coupled with the use of the reserve account dollars. These reserve dollars would include funds that are: (a) unused in prior periods ROR Carrier forward-looking mechanism CAF III support allocations; (b) any unused ROR Carrier USF from current mechanisms and ROR Carrier model-based CAF II support; and (c) the result of any

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[11] *See e.g., FNPRM* at ¶¶ 21, 268, 269, 273 and 289.

[12] Annualized USF and CAF demand for ROR Carriers in 2013 was projected by USAC to be $2.014 billion, however actual disbursements were $1.958 billion. *See FNPRM* at ¶ 273 and n. 485. Updated information provided by the Commission confirms that the Connect America reserve account "has a balance of $1.76 billion as of the third quarter of 2014, with $1.54 billion of those funds already allocated to Connect America Phase I, Tribal Mobility Fund Phase I, and Mobility Fund Phase II." *In the Matter of Connect America Fund, ETC Annual Reports and Certifications, Report and Order and Further Notice of Proposed Rulemaking*, WC Docket Nos. 10-90 and 14-58, FCC 14-98, released July 14, 2014 at ¶ 11, n. 26.

savings associated with prior period ROR Carriers' Recovery Mechanism[13] for the phase down of ICC rates. These modifications to the current ROR Carrier USF and CAF ICC programs are in the public interest and, therefore, should be adopted.

Moreover, these reforms are consistent with the critical role that ROR Carriers have established in the deployment and operation of broadband-capable networks in rural America, a fact already acknowledged by the Commission: "We recognize that, in the absence of any federal mandate to provide broadband, rate-of-return carriers have been deploying broadband to millions of rural Americans, often with support from a combination of loans from lenders such as RUS and ongoing universal service support."[14] This deployment often involves "smaller carriers [that] serve some of the highest cost areas of the nation."[15] The Commission reaffirmed these findings in the *FNPRM*, stating, with respect to ROR Carriers "play[ing] a significant and vital role in the deployment of 21st century networks throughout the country," that "telephone service would not exist today in many rural and remote areas of the country without the concerted efforts of local companies to serve their communities."[16] Thus, it is not surprising that the Commission has recognized that "[a]lthough they serve less than five percent of access lines in the U.S., smaller rate-of-return carriers operate in many of the country's most difficult and expensive areas to serve."[17]

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[13] *See* 47 C.F.R. § 51.917.

[14] *In the Matter of Connect America Fund, et al., Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 10-90, et al., FCC 11-161, 26 FCC Rcd 17663 (2011) ("*USF/ICC Transformation Order*") at ¶ 205 (footnote omitted).

[15] *Id.* at ¶ 209.

[16] *FNPRM* at ¶ 258.

[17] *USF/ICC Transformation Order* at ¶ 26.

Accordingly, NRIC is encouraged that the Commission intends to continue to make progress toward achievement of the goal of ubiquitous access to broadband by all consumers in this country and to provide support to finance investment already made. To assist in achieving this objective, NRIC respectfully requests that contribution reform be addressed by the Commission and, at least initially, that the current reforms associated with the concepts relating to USF, ROR Carrier model-based CAF II support, and any ROR Carrier forward-looking mechanism CAF III support include the use of reserve funds, and that specific elements discussed above be adopted by the Commission including use of the full current $2 billion annual budget

B. Existing Methods to Balance the Budget through the Adjustment of the ATC as Used in the Current Price Cap Model-Based Environment should be Rejected for Rate of Return Carriers as it Risks Creating a New "Cliff" that Inhibits Investment.

Although NRIC recognizes the current budget constraints, NRIC is concerned that actions taken in meeting the budget constraints imposed on PC Carriers (in the context of the PC CACM) might be used to meet the budget constraints for ROR Carriers. For the reasons stated herein, NRIC opposes using the ATC as it will create uncertainty that will inhibit investment. In the end, this uncertainty obstructs rather than facilitates the Commission's goal of promoting broadband investment. In the alternative, NRIC respectfully requests Commission consideration of alternatives that would not have as significant an impact on investment by eligible ROR Carriers and are, in NRIC's view, more straightforward.

To meet the overall budget constraint for PC Carriers, the Bureau reduced the ATC from \$207.81 to \$172.51 in conjunction with introducing a higher speed benchmark.[18]

NRIC is concerned that in the future the Commission or the Bureau might use this technique in a similar fashion for ROR support when there is a perceived need to balance the ROR USF budget. The unpredictability established by this new "cliff" would lead to a negative impact on investments. Budget balancing by reducing the ATC would create a support "cliff" whereby many high-cost areas that formerly were below the old ATC value would become ineligible for support. Moreover, using the ATC to balance the ROR budget may strand investments previously made to reach extremely high-cost customers and is inconsistent with the Commission's statement that support for extremely high-cost areas may not just be funded through the Remote Area Fund.[19]

As a means to illustrate the "cliff," NRIC offers the following analogy to an airport portable stairway ("air stair") used to load passengers on airplanes prior to modern jetways.[20] Assume that such an air stair has 20 steps with one passenger standing on each step. Further assume that each passenger has a unique cost and receives a unique amount of support, as indicated in the following table.

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[18] *See Wireline Competition Bureaus Releases Connect America Fund Cost Model Illustrative Results Using Higher Speed Benchmark, Public Notice*, WC Docket No. 10-90, DA 14-833, released June 17, 2014 (the "*June 17th Increased Broadband Speed Notice*") at 2.

[19] *See 7th Recon Order* at ¶ 71.

[20] These are wheeled stairways that airlines sometimes roll up to airplanes so that passengers can embark or disembark from airplanes.

Passenger #	Stair Step	Cost ($/sub/mo)	Support ($/sub/mo)
1	Bottom	$60	$10
2	2	$70	$20
* * * *			
19	19	$240	$190
20	Top	$250	$200

If the budget is insufficient to actually provide full support for all 20 passengers, two options are possible: the "Step Down Method" and the "Cliff Method". Under the "Step Down Method," all passengers would move down one step, each losing $10 of support per subscriber per month.[21]

Passenger #1 also loses $10, which in this case is 100% of his support. The *FNPRM* suggests that Passenger #1 has fallen "off the cliff"[22] although in truth his loss is equal to every other passenger on the stairway. Under the stairway analogy, a second method to meet budgetary constraints would be to disqualify passengers receiving significant support. In the air stair analogy, this means that some passengers on the upper stairs metaphorically plunge to the tarmac. For reference, this is referred to below as the "Cliff Method" because the financial difference for affected carriers is so large. In the air stair analogy, Passenger #20, for example, would fall from $200 per subscriber per month to $0.

Assuming all passengers have an equal opportunity to recover lost support from their subscribers, then it would be equitable that each passenger should lose the same amount per subscriber. Thus, the "Step Down Method" is preferable to the "Cliff Method" when applying budget constraints.

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[21] A process similar to this Step Down Method is currently used to adjust the HCLS program. Under the HCLS mechanism, when the budget is exceeded, the national average cost per loop ("NACPL") is adjusted upward to allow carriers qualifying for HCLS to receive an adjusted share of the HCLS budget. *See* 47 C.F.R. §§36.603 and 36.604.

[22] *See FNPRM* at ¶¶ 261, 262.

1. The impact of any ATC "cliff" for ROR Carriers creates additional uncertainty and unpredictability as the "cliff" can worsen for many reasons.

The Bureau's decision to lower the ATC as presented in the *June 17th Increased Broadband Speed Notice* apparently was a choice to balance the budget by eliminating all support for PC Carrier locations with model costs above $172.51. This result follows from the use of the Cliff Method. The net effect of lowering the ATC to meet the PC Carrier budget resulted in an increase to the number of eligible census blocks and corresponding locations. Many events can force an eligible Incumbent Local Exchange Carrier ("ILEC") over the ATC cliff. For example:

1. More census blocks become eligible for CAF Phase II support because:
   a. The Commission disqualifies fewer census blocks due to competitors.
   b. A major unsubsidized broadband competitor exits the market and the census blocks formerly served by that competitor become eligible for support.
2. In the PC CACM, the Commission decides to:
   a. Incorporate recent inflation in materials or labor costs;
   b. Change network design assumptions to reflect new technologies;
   c. Change assumptions for plant mix and plant sharing;
   d. Change assumptions regarding the cost of money; or
   e. Modify the operating expense methodology to reflect additional variables.
3. In the support model, the Commission decides to reduce the lower benchmark funding threshold below $52.50.

NRIC acknowledges that quantifying the probability of occurrence of these listed risks is imprecise, but the risks still exist. Accordingly, NRIC respectfully submits that, if the

Commission establishes a precedent that adjusting the ATC is the preferred method for balancing the budget for short term ROR Carrier model-based CAF II support, virtually all future changes in a model-based support system could lower the ATC further and force still more census blocks/locations off the ATC cliff. Similar concerns will also apply to the ROR Carrier forward-looking mechanism CAF III.

2. The uncertainty and unpredictability associated with the ATC "cliff" will inhibit investment and thus run counter to the public policy objectives of short-term ROR Carrier model-based CAF II and any ROR Carrier forward-looking mechanism CAF III mechanism.

Based on the above discussion, NRIC respectfully submits that it is highly questionable whether a rational high-cost ROR Carrier would make incremental network investment with long asset lives and involving long-term debt in the face of a substantial risk that in any subsequent year a given customer's costs might exceed the ATC. For example, a carrier might upgrade a customer's network connection to fiber one year and then because of changes to the model, the budget or competition elsewhere in the nation, the customer's network connection may no longer be funded through the CAF because the customer's model cost exceeds the ATC.

Perhaps the most pernicious aspect of this dynamic is that it inhibits investment in precisely those areas – the highest cost areas -- that rely most heavily on federal support. In general, these areas do not have the ability to average costs and support across multiple states and multiple product and services. The ATC cliff risk makes it questionable that the ROR Carriers serving these higher cost areas can rationally make the commitments to finance new broadband investment. Reducing this ATC cliff risk is one essential element in the overall no-backsliding policy that NRIC discusses in Section V.A., below.

3. Other options should be used to balance the budget in areas served by ROR Carriers.

Even though the Commission is firmly committed to setting and observing a maximum budget for high-cost support to ROR Carriers, NRIC believes that more equitable and rational options exist for balancing the budget, other than the "Cliff Method" described above.

For example, one option is to raise the lower funding Benchmark ("Benchmark") established for purposes of the PC CACM when a ROR Carrier model-based CAF II is developed.[23] Returning to the air stair analogy, a budget shortage would force every customer to move down one step on the air stair. This "Benchmark Method" is far preferable to forcing a number of high-cost areas to fall off the top step of the air stair, as would happen under the "Cliff Method."

Another option, the "Pro-rata Method", is to pro-rate all support amounts downward by the same percentage to meet the budget, but this is not as preferable as the "Benchmark Method" discussed above. The *FNPRM* proposed using the Pro-Rata Method for HCLS in that it might be reduced "proportionally among all HCLS recipients by no longer adjusting the NACPL, but instead reducing the reimbursement percentages for all carriers."[24] NRIC suggests that this change not be approved because the Pro-Rata Method would cause more harm to high-cost customers than the Step Down Method and it would cause more uncertainty in the near term while the Commission contemplates long-term support changes.

In summary, NRIC believes that options exist and should be explored to equitably distribute limited support dollars to all eligible ROR Carriers which, while raising the risk of

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[23] In the support mechanism, support equals cost minus the benchmark in each geographic unit. In both the 3 Mbps and 10 Mbps runs, the Benchmark for Price Cap Carriers was set at $52.50. *See June 17th Increased Broadband Speed Public Notice*, Attachment 1.

[24] *Id.* at ¶261.

limiting investment, should be considered as compared to the more draconian approach of eliminating all support for certain areas served by a ROR Carrier. NRIC respectfully submits that the Commission should consider these alternatives and avoid use of the ATC as a "budget balancing" method when developing a ROR Carrier model-based CAF II or a ROR Carrier forward-looking mechanism CAF III.

III. THE COMMISSION IS ON THE RIGHT TRACK IN THE SHORT TERM BY SEEKING INCENTIVES THAT ENCOURAGE ROR CARRIERS TO TRANSITION TO CONNECT AMERICA FUNDING AND TO BUILD OUT BROADBAND SERVICES.

The Commission proposes to adopt a stand-alone broadband funding mechanism for ROR Carriers via a voluntary, two-phase transition to model-based support, including participation in CAF Phase II.[25] NRIC supports giving companies the option to move to model-based support,[26] assuming the model contains inputs that accurately reflect the deployment and operating costs of ROR Carrier service areas and properly distributes support to high-cost areas.[27] Nevertheless, NRIC cautions that the transition from current support mechanisms to a model must be implemented in a manner that balances the need for ROR Carriers to reasonably recover existing network deployment and operating costs with the policy goal of better targeting support to high-cost areas that lack fixed broadband service and have received limited USF under current rules.

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[25] *See FNPRM* at ¶ 276.

[26] *See generally Comments of the Nebraska Rural Independent Companies in Response to May 16, 2013 Public Notice*, WC Docket No. 10-90 (filed June 17, 2013) (the "*NRIC June 2013 Comments*").

[27] *See id.* at 6-25.

The Commission identifies four design characteristics that it desires to implement in connection with a new, stand-alone broadband funding mechanism for ROR Carriers.[28] Implemented properly, a reasonable transition to a mechanism containing these characteristics is in the public interest. NRIC particularly stresses the need for ROR Carrier USF to be distributed equitably and efficiently, so that all ROR Carriers can build out, maintain and operate broadband-capable networks in their service areas. But as the *FNPRM* observes, the migration to model-based support for ROR Carriers introduces a host of policy issues that must be addressed prior to implementation of the model.

A. In the Short Term, the ITTA Plan's Optionality has Merit as a ROR Structure, but Constraints are Necessary to Ensure Fair and Policy-Based Distribution of Limited Support.

The *FNPRM* appears to suggest that the plan submitted by the Independent Telephone & Telecommunications Alliance (the "ITTA")[29] to allow ROR Carriers to voluntarily move to CAF model-based support or to remain on frozen HCLS and ICLS mechanisms holds promise for a platform from which a reasonable transition to model-based support for ROR Carriers can be considered. NRIC believes the ITTA proposal holds a degree of promise in that, through a proper ROR Carrier model-based CAF II, the ITTA proposal could target support to the nation's more costly unserved and higher cost-to-serve areas. This model, presumably using the PC CACM as a start, would require modifications necessary to reflect the network deployment and

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[28] *See FNPRM* at ¶ 269 (proposing the new ROR mechanism "be designed to (a) calculate support amounts that remain within the existing" ROR budget, "(b) distribute support equitably and efficiently, so that all" ROR carriers have the "opportunity to extend broadband service where it is cost-effective to do so, (c) distribute support based on forward-looking costs (rather than embedded costs), and (d) ensure that no double recovery occurs by removing the costs associated with the provision of broadband Internet access service from the regulated rate base.").

[29] *See id.* at ¶ 278.

operational realities confronting ROR Carriers. Further, selection of model-based support presumably will involve an obligation by the receiving ROR Carrier to build out broadband to all customers in a state or study area, similar to the PC Carrier requirement.[30] NRIC notes, however, that a key difference of the ITTA Plan[31] is that the build-out timeframe for ROR Carriers opting for model-based support would be ten years,[32] not the five years ordered for PC Carriers, a result that, with the modifications suggested below, should be adopted for short-term ROR Carrier model-based support.[33]

Given that ROR Carriers would have the option under the ITTA Plan of selecting frozen support under the current method or moving to model-based support, NRIC recognizes the incentives for a ROR Carrier to select the option that provides it with the most universal service support. NRIC is concerned, however, that providing ROR Carriers with the option of continued receipt of frozen existing support without modifications will likely place significant stress on the ROR budget. This stress is not, in NRIC's view, that much different than the concerns expressed

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[30] *See USF/ICC Transformation Order* at ¶ 150 (requiring price cap carriers to use an increasing portion of their frozen high-cost support "to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor.") (footnote omitted).

[31] *See* Ex Parte Letter from Genevieve Morelli, President, ITTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (filed February 27, 2014) ("*ITTA Ex Parte*"), Attachment at 1.

[32] For the reasons stated below, NRIC respectfully submits that any funding period should be at least ten (10) years based on the network and operating characteristics of ROR Carriers.

[33] When exogenous and/or force majeure events render application of the ROR Carrier model-based CAF II to a ROR Carrier improper, NRIC respectfully suggests that the Commission should confirm the application of the traditional waiver standard under 47 C.F.R. 1.3. Such confirmation, NRIC respectfully requests, should also reference the "public interest" standard arising from *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*accord 7th Recon Order* at ¶ 79, n.165), and the hardship, equity, or more effective implementation of overall policy standards acknowledged to be appropriate in *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

by the Commission that the current HCLS mechanism encourages a "race to the top"[34] where the existing USF rules create the perverse incentive for many ROR Carriers to incur costs significantly higher than other ROR Carriers in order to qualify for large amounts of HCLS. NRIC generally concurs with the Commission regarding this "race to the top" and has advocated that the rules creating the incentive for this activity must be addressed.[35]

Thus, allowing ROR Carriers to self-select to freeze existing support perpetuates the problems of the current support system. By making such an election, a ROR Carrier could contend that it should continue to have support levels determined based on when investments might be at or near an all-time high, thus failing to reflect the actual investment levels left to be recovered and resulting in an inability to provide federal support to a broader base of eligible ROR Carriers. That inability, in NRIC's view, should be avoided and the following constraints should be adopted.

1. Constraint No. 1: All ROR Carriers' support should be adjusted to be within ROR cap.

NRIC understands that the Commission is considering an approach that provides an option for ROR Carriers to either move to model-based support or to maintain their current level of frozen support, with a near-term measure of initially freezing the NACPL and annually resetting the indexed cap on HCLS.[36] NRIC respectfully suggests that, as the mechanisms are being implemented, all ROR Carriers will have their support adjusted to fit the ROR budget.

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[34] *FNPRM* at ¶ 259.

[35] *See e.g.*, Ex Parte Letter from Cheryl L. Parrino, on behalf of NRIC, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, 05-337, 06-122, CC Docket No. 01-92 (filed June 20, 2014) (the "*NRIC June 2014 Ex Parte*").

[36] *See FNPRM* at ¶¶ 261-262.

2. Constraint No. 2: A partial waiver of the build-out requirement should be available in extreme circumstances.

Likewise, given that the total ROR budget is currently limited to $2 billion annually including CAF for ICC reductions, NRIC continues to be concerned that achieving total build-out to all eligible locations identified by the PC CACM modified to address ROR Carriers will be difficult to attain for some companies that serve and operate in very costly areas, even with an increase of support under the model. There may well be areas that are simply cost prohibitive either under frozen or model-based support. Indeed, the PC CACM results confirm that the nationwide unconstrained, by support thresholds or the National Broadband Map ("NBM"), annual cost of providing broadband to all ROR Carrier locations is [redacted], which is [redacted].

In extremely high-cost areas, depending on the final results of the PC CACM, the Commission should adopt a rule that recognizes that in certain circumstances it is entirely appropriate to provide for an extension of the build-out requirement[37] within either the entirety of or a portion of a ROR Carrier's study area. The Commission may need to allow a longer period of time to deploy investment in such areas given realistic constraints such as limited funding from capital markets, as well as limited equipment, fiber and contractor availability. In light of this reality, NRIC respectfully submits that it is entirely appropriate that ROR Carriers that opt for ROR Carrier model-based CAF II support have additional time to build out to customers. However, even with the additional time, NRIC appreciates that the limitations on the overall ROR budget and the extreme cost of build-out to some very rural customer locations may make it unrealistic to do so. Thus, the Commission should adopt a rule allowing ROR Carriers to seek

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[37] As mentioned above, the build out requirement for ROR Carriers should be at least 10 years.

a partial waiver of a build-out requirement, subject to a specific demonstration of prohibitive costs in certain areas.

NRIC notes that this partial waiver availability would become even more critical if the Commission were to increase the broadband minimum CAF speed standard to 10 Mbps downstream/1 Mbps upstream. The Commission should conduct its own illustrative runs and make the output publicly available but NRIC anticipates that, in light of the current budget constraints associated with meeting the 4 Mbps downstream/1 Mbps upstream standard, some ROR Carriers serving very high cost areas would be unable to meet the 10 Mbps downstream/1 Mbps upstream standard for all locations. Thus, an extension of the ten-year build-out requirement will be necessary under a 10 Mbps downstream/1 Mbps upstream standard, along with the partial waiver opportunity where a ROR Carrier can specifically demonstrate certain locations cannot be served under available model-based support.

B. In the Short Term, the Transition to Model Support Should be Accomplished in a Predictable and Transparent Manner, Subject to Statutory Requirements.

In proposing to adopt rules to allow ROR Carriers to voluntarily transition to model-based support, the Commission seeks input on how to implement this transition while meeting its statutory directives.[38] NRIC agrees that the Commission must make specific findings that are required by the legal requirements applicable to providing universal service funding to *only* eligible telecommunications carriers ("ETCs"). Thus, the Commission appropriately requests comments with respect to the legal framework as it undertakes major adjustments to universal service policy in the nation's most rural areas, particularly to "the overall statutory principle of

[38] *See id.* at ¶ 283.

providing predictable and sufficient support" under Section 254(b)(5) of the Act[39] as well as the requirements of Section 214(e).

NRIC is mindful that a shift to model-based support, whether voluntary or ultimately mandatory, represents a redistribution of the current, limited budget support among ROR Carriers and, as has been the case under existing rules, some ROR Carriers will necessarily receive reduced support. Thus, NRIC respectfully submits that the Commission should adopt the following requirements in order to ensure as predictable and as transparent a transition as possible.

1. During the transition to model-based support, an annual election window should be opened for ROR Carriers to opt to receive support from the short-term ROR Carrier model-based CAF II.

The Commission seeks comment on whether selection of and transitioning to model-based support should be allowed annually or limited to a one-time election in 2015, and whether a deadline for electing this path should be imposed after the Bureau adopts revisions to the PC CACM in order to establish a short-term ROR Carrier model-based CAF II.[40] NRIC recommends an annual window be opened for election by a ROR Carrier to receive model-based support.

Given that one of the Commission's apparent goals is to establish incentives for ROR Carriers to migrate to model-based support, NRIC respectfully submits that it is reasonable that ROR Carriers not be limited to a single election opportunity at the onset of the transition to decide to shift to that model-based support. Thus, the Commission's suggestion of an initial

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[39] *Id.* at ¶ 289.

[40] *See id.* at ¶¶ 284-85.

120-day window for a ROR Carrier to select the voluntary path[41] is appropriate to enable ROR Carriers to assess their options and make informed choices *but only* after the ROR Carrier model-based CAF II is completed and illustrative results are publicly provided by the Commission.

For ensuing years, NRIC recommends that a shorter window – perhaps 30 days – be made available on an annual basis during which ROR Carriers may voluntarily opt to move study areas to model-based support once additional information is provided publicly by the Commission in these ensuring years. Specifically, this entails the *FNPRM's* proposal to direct the National Exchange Carrier Association ("NECA") to annually re-base the high-cost loop cap within 30 days of any deadline for election by a ROR Carrier of voluntary model-based support.[42] This re-sizing, in NRIC's view, should be reported by NECA for the entirety of the prior year, and provided publicly by the Commission no later than 30 days before the ensuing year's election. This information will assist ROR Carriers in making a better informed decision regarding ROR Carrier model-based CAF II support, particularly if a company can avoid the annual filing of expensive cost studies and the unpredictability and inequities among ROR Carriers and material swings in support that are occurring under current support mechanisms. In summary, NRIC anticipates that once the process is established and experience with the migration to ROR Carrier model-based support is developed, it is reasonable to conclude that the process for ROR Carriers opting for model-based support will be streamlined. The additional information requested herein will assist ROR Carriers in making a more informed decision and thus should be adopted as furthering the public interest.

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[41] *See id.* at ¶ 285.

[42] *See id.* at ¶ 286.

2. The Commission should "kick-start" ROR Carriers' shift to model-based support as contemplated in the *FNPRM.*

The *FNPRM* queries whether the Commission should effectively "kick start" implementation of a stand-alone broadband mechanism for ROR Carriers by allocating funding from the broadband reserve account to the extent voluntary election of model-based support results in an overall ROR support level exceeding the $2 billion budget.[43] Such a step is likely warranted and reasonable, again given the goal of creating the appropriate incentives for ROR Carriers to shift to a broadband-based support mechanism such as a ROR Carrier model-based CAF II.

At the same time and as noted above, NRIC appreciates the dilemma for the Commission where ROR Carriers will be operating simultaneously under two high-cost support systems with the introduction of model-based support in the first year of the transition. NRIC anticipates that this option, in turn, may make it very difficult to predict the demand on the ROR budget. Since the model amounts to be made available to ROR Carriers will be based upon setting the ROR model parameters at the $2 billion ROR budget while many ROR Carriers remain on frozen HCLS and ICLS, the sum of the demands on both mechanisms will likely surpass the budget. Thus, accessing the reserve account as is being suggested by the Commission, and as NRIC has suggested above, in order to accommodate the additional demand for those selecting ROR Carrier model-based CAF II based support, will certainly add greater financial wherewithal to any transition process. In subsequent years, the ability to operate closer to or at the ROR budget should improve since: (1) limitations on frozen support continue to decrease the amount of that support paid out, coupled with the Commission's proposed rule that no new investment be

[43] *See id.* at ¶ 289.

recoverable from HCLS and ICLS in areas with competitors;[44] and (2) the possibility that no new investment would be included in cost studies used for the determination of HCLS and ICLS after a date certain.[45]

3. The Commission should create the incentive for companies to opt for model support by allowing companies to do so on a study area basis.

The Commission proposes that participating ROR Carriers be required to make a statewide election to receive model-based support, not a study area by study area election as proposed in the ITTA Plan.[46] According to the *FNPRM*, requiring state-level election would prevent ROR Carriers from "cherry picking the most attractive areas."[47] NRIC understands the concern, but believes it is not necessary – and in fact would be counterproductive to the Commission's goal of creative incentives for companies to elect model support.[48] Thus, NRIC respectfully recommends that the Commission refrain from requiring all ROR study areas under a common holding company from being required to elect model support on a statewide basis if the company elects to do so for a subset of study areas.

NRIC has analyzed the budget impact of all ROR study areas under common holding companies converting to model-based support. This analysis found that the financial impact of requiring all study areas in a state to convert to model-based support, rather than allowing conversion on a study area basis, would [redacted].

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[44] *See id.* at ¶ 265.

[45] *See id.* at ¶ 267.

[46] *See id.* at ¶ 287.

[47] *Id.*

[48] *See id.*